

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

LEROY T. PINKNEY,

Petitioner,

v.

Civil Action No. 5:14CV141
(STAMP)

WARDEN OF FCI GILMER,

Respondent.

MEMORANDUM OPINION AND ORDER
AFFIRMING AND ADOPTING REPORT AND
RECOMMENDATION OF MAGISTRATE JUDGE

I. Background

The pro se¹ petitioner, a federal inmate, filed his petition under 28 U.S.C. § 2241 ("§ 2241") concerning the revocation of his parole. The petitioner was convicted of committing an armed robbery in 1979. He received a sentence of twenty-years imprisonment by the Superior Court of the District of Columbia. Later, he was released on parole in 2007, and he was to remain on parole until 2015. However, the petitioner violated his parole numerous times, and ultimately the United States Parole Commission ("the Commission") revoked his parole. The Commission ordered the petitioner to serve a term of twenty-four months imprisonment, followed by a term of parole upon the petitioner's release. In his petition, the petitioner essentially argues that the Commission

¹"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1416 (10th ed. 2014).

improperly revoked his parole and improperly calculated his term of the same. For relief, the petitioner requests that he be released from prison. The respondent filed a motion to dismiss or, alternatively, a motion for summary judgment, wherein it argued that the statute of limitations barred the petitioner's petition. The petitioner filed a response, in which he reasserted his previous arguments.

United States Magistrate Judge James E. Seibert entered a report and recommendation, wherein he recommends dismissing with prejudice the petitioner's petition. ECF No. 28. The magistrate judge points out that the petitioner was released on August 21, 2015. Therefore, the BOP no longer maintains custody of the petitioner. Accordingly, the magistrate judge found that the petitioner's request is now moot because the petitioner is no longer serving a sentence. Magistrate Judge Seibert also recommended granting the respondent's motion to dismiss, or in the alternative, motion for summary judgment on "other grounds than [those] stated by the respondent." The petitioner did not file objections to the report and recommendation, and he has not updated his change of address since release.

II. Applicable Law

Pursuant to 28 U.S.C. § 636(b)(1)(C), this Court must conduct a de novo review of any portion of the magistrate judge's recommendation to which objection is timely made. Because no

objections were filed, all findings and recommendations will be upheld unless they are "clearly erroneous or contrary to law." 28 U.S.C. § 636(b)(1)(A). As the Supreme Court of the United States stated in United States v. United States Gypsum Co., "a finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." 333 U.S. 364, 395 (1948).

III. Discussion

"A case is moot when the issues presented are no longer 'live' or the parties lack a legally cognizable interest in the outcome." Powell v. McCormack, 395 U.S. 486, 496 (1969). Moreover, "Article III's 'case or controversy' requirement prevents federal courts from deciding cases that are moot." Blanciak v. Allegheny Ludlum Corp., 77 F.3d 690, 698 (3d Cir. 1996) (citing Liner v. Jafco, Inc., 375 U.S. 301 n.3 (1964)). Here, the petitioner sought a recalculation of his term of parole, and ultimately release from prison. The petitioner has since been released, and therefore his claim for relief is now moot. Thus, the petitioner's petition is dismissed as moot. Accordingly, the Court finds no clear error in the magistrate judge's findings, and the report and recommendation of the magistrate judge is AFFIRMED AND ADOPTED.

IV. Conclusion

For the reasons set forth above, the report and recommendation of the magistrate judge (ECF No. 28) is AFFIRMED AND ADOPTED. Therefore, the respondent's motion to dismiss and response to show cause (ECF No. 25) is GRANTED and the petitioner's petition is DISMISSED AS MOOT. Further, it is ORDERED that this civil action be DISMISSED and STRICKEN from the active docket of this Court.

Finally, this Court finds that the petitioner was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action would result in a waiver of appellate rights. Because the petitioner has failed to object, he has waived his right to seek appellate review of this matter. See Wright v. Collins, 766 F.2d 841, 844-45 (4th Cir. 1985).

IT IS SO ORDERED.

The Clerk is directed to transmit a copy of this order to the pro se petitioner by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is DIRECTED to enter judgment on this matter.

DATED: December 10, 2015

/s/ Frederick P. Stamp, Jr.
FREDERICK P. STAMP, JR.
UNITED STATES DISTRICT JUDGE